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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/623,584	12/04/2000	Horst Grafe	HM-349 PCT	5053
7590 01/25/2005				
Friedrich Kueffner 317 Madison Avenue Suite 910 New York, NY 10017		EXAMINER ASHLEY, BOYER DOLINGER		
		ART UNIT 3724		PAPER NUMBER

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/623,584

Applicant(s)

GRAFE ET AL.

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-28 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-21 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is in response to applicant's amendment filed 10/5/04, wherein claim 14 was amended.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 14-19, 21, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Foreign Document (France) 2,149,173, hereinafter FD '173.

FD '173 discloses the same invention as claimed including, e.g., cutting tools (5-8) mounted on opposing rotating drums (3,4), wherein the rotating drums are accelerated to a driven peripheral speed equal to the strip (otherwise the cutters be jammed by the workpiece as inherently known). FD '173 discloses a separately controllable adjusting device (13-25), wherein the one of the drums is mounted on rockers (14, one on each side) such that the drum is pivotable to change a distance between the drums (as shown in the Figures). The adjusting device uses drives (20-21, 23-25, one on each side) for effecting the cutting movement and support elements (19 one on each side) for the rockers, wherein the support elements are shortenable to an effective position for effecting cuts, in that, the support elements 19 move in and out of the drives and therefore the length extending from the drive is shortenable.

As to claim 15, the support elements of FD '173 are mounted between the drives and the rockers, as shown in the Figures.

As to claim 16, the support elements of FD '173 have an effective length which is lockable by elements 22-25 or rather by not actuating the drive.

As to claim 17, FD '173 includes drives with cranks, that is, arm 23 is attached to a shaft (the center pivot pin).

As to claim 18, FD '173 includes the drives being configured as piston-cylinder units (piston 21a, cylinder 20).

As to claim 19, FD '173 discloses the use of a synchronization means between the drives and the driving device, in that, the device includes a means for controlling both the drives and the driving device to cut the strips.

As to claim 21, the device of FD '173 is fully capable of having the supporting elements moved into an effective position before a working stroke of the drive begins.

As to claim 27, the device of FD '173 is fully capable of being an integral part of coiler.

4. Claim 14-17, 19, 21, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito, U.S. Patent 4,058,041.

Ito discloses the same invention as claimed including, e.g., cutting tools (21b, 24b) mounted on opposing rotating drums (21,24), wherein the rotating drums are accelerated to a driven peripheral speed equal to the strip (see the abstract). Ito discloses a separately controllable adjusting device (26, 32-36), wherein one of the drums is mounted on rockers (26,26a) such that the drum (24) is pivotable to change a

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distance between the drums (as shown in the Figures, pivots about 29/30). The adjusting device uses drives (32,32a) for effecting the cutting movement and support elements (33,33a) for the rockers, wherein the support elements are shortenable to an effective position for effecting cuts, in that, the support elements move up and down by the eccentric cam and therefore the length extending from the drive is shortenable.

As to claim 15, the support elements of Ito are mounted between the drives and the rockers, as shown in the Figures.

As to claim 16, the support elements of Ito have an effective length, which is lockable by motor 36 or rather by not actuating the drive.

As to claim 17, Ito includes drives with cranks, that is, arms 33/33a are attached to a shaft (31).

As to claim 19, Ito discloses the use of a synchronization means between the drives and the driving device, in that, the device includes a means for controlling both the drives and the driving device to cut the strips.

As to claim 21, the device of Ito is fully capable of having the supporting elements moved into an effective position before a working stroke of the drive begins.

As to claim 27, the device of Ito is fully capable of being an integral part of coiler.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over FD '173.

FD '173 discloses the invention substantially as claimed including a chisel blade as the cutting tools mounted on both of the drums and therefore, lacks one drum with a jacket area acting as an anvil. However, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a chisel in combination with jacket area anvil instead of two chisels of the purpose of preventing the need for accurate alignment between the upper and lower drums because the examiner takes Official notice of the equivalence of multiple co-acting drums using co-acting chisels or chisels and co-acting anvil jackets for their use in the flying drum cutting art and the selection of any of these known equivalents to create multiple cuts in a workpiece would be within the level of ordinary skill in the art.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito in view of Shinomiya et al., U.S. Patent 4,506,577.

Ito discloses the claimed invention except that a motor and crank system is used for the drives instead of piston-cylinder units. Shinomiya et al. show that piston-cylinder units (17) are equivalent structures known in the art. Therefore, because these two blade moving means were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute piston-cylinder units for the motor and crank systems of Ito in order provide more cutting force on the blades.

8. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ito.

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It discloses the invention substantially as claimed including a chisel blade as the cutting tools mounted on both of the drums and therefore, lacks one drum with a jacket area acting as an anvil. However, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a chisel in combination with jacket area anvil instead of two chisels of the purpose of preventing the need for accurate alignment between the upper and lower drums because the examiner takes Official notice of the equivalence of multiple co-acting drums using co-acting chisels or chisels and co-acting anvil jackets for their use in the flying drum cutting art and the selection of any of these known equivalents to create multiple cuts in a workpiece would be within the level of ordinary skill in the art.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the


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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
January 20, 2005